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In the Supreme Court of the United States

Term, 19

No.

SUNCREST ENVIRONMENTAL RESOURCES CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW:

1. Is the conviction, sentencing and imposition of fines against both Phillip Gaziano and Suncrest Environmental Resources Corporation prohibited by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution?

2. Did the trial court err in refusing defense counsels' request to ask prospective jurors whether they had a business relationship with the alleged victim, West Penn Power Company, and did that error deprive Petitioner of its right to an impartial jury under the Sixth Amendment to the United States Constitution and to Due Process of Law under the Fifth Amendment to the United States Constitution?

PARTIES TO THIS PROCEEDING IN THE COURT BELOW

This action, as filed in the United States Court of Appeals for the Third Circuit, was styled *United States of America v. Phillip Gaziano, Alfred Royster, Jr., and Suncrest Environmental Resources Corp., Suncrest Environmental Resources Corp., Appellant,* at No. 81-2683. Petitioner's co-defendants below filed separate appeals denominated as *United States of America v. Phillip Gaziano,* at No. 81-2681, and *United States of America v. Alfred Royster, Jr.,* at No. 81-2682, which appeals were consolidated before the Third Circuit Court of Appeals.

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OPINION BELOW

The United States Court of Appeals for the Third Circuit issued a Judgment Order on May 11, 1982. A copy of this Order is contained in the Appendix at pp. 1a-2a. No opinion was rendered by the Court of Appeals or by the District Court for the Western District of Pennsylvania.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), wherein it is provided, *inter alia*, that cases in the Courts of Appeals may be reviewed by the Supreme Court by Writ of Certiorari granted upon the Petition of any party to any civil or criminal case before or after rendition of judgment or decree.

Petitioner, Suncrest Environmental Resources Corporation, seeks review of the Judgment Order issued and entered by the United States Court of Appeals for the Third Circuit on May 11, 1982.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

Constitutional Provisions:

UNITED STATES CONSTITUTION, AMENDMENT 5

No persons shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

UNITED STATES CONSTITUTION, AMENDMENT 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Statutes:

TITLE 18, CRIMES AND CRIMINAL PROCEDURE SECTIONS 371, 1341 and 1952

§371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.
(June 25, 1948, ch 645, §1, 62 Stat. 701.)

§1341. Frauds and swindles.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out

to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.
(June 25, 1948, ch 645, §1, 62 Stat. 763; May 24, 1949, ch 139, §34, 63 Stat. 94; Aug. 12, 1970, P.L. 91-375, §6(j)(11), 84 Stat. 778.)

§1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or
(2) commit any crime of violence to further any unlawful activity; or
(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act [21 USCS §802(b)]), or prostitution offenses in violation of the laws of the State in which they are committed

or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.
(Added Sept. 13, 1961, P.L. 87-228, §1(a), 75 Stat. 498; July 7, 1965, P.L. 89-68, 79 Stat. 212; Oct. 27, 1970, P.L. 91-513, Title II, Part G, §701(i)(2), 84 Stat. 1282.)

STATEMENT OF THE CASE

Petitioner, Suncrest Environmental Resources Corporation (hereinafter SERC) was indicted by the Government along with Phillip Gaziano (hereinafter Gaziano), its president, controlling shareholder and owner, and Alfred Royster on or about January 31, 1981.

Following a jury trial in the United States District Court for the Western District of Pennsylvania before the Honorable Alan N. Bloch, the jury returned a verdict of guilty as to all counts against Petitioner, Gaziano and Royster. Petitioner and Gaziano were each convicted of two (2) counts of mail fraud, in violation of Title 18, U.S.C. §1341, twelve (12) counts of using interstate facilities in furtherance of commercial bribery, in violation of Title 18, U.S.C. §1952 and one (1) count of conspiracy to commit mail fraud and to use interstate facilities in furtherance of commercial bribery, in violation of Title 18, U.S.C. §371.

Judgment and sentence were imposed on July 17, 1981 by Judge Bloch. Judge Bloch imposed duplicate fines against Petitioner and against Gaziano for the aforementioned convictions. The fines imposed by Judge Bloch against Petitioner and against Gaziano were the maximum allowed by law.

The evidence presented at trial established that SERC is a close corporation, whose president, controlling shareholder

and owner is Gaziano. The presentence report identified Gaziano as the "owner, president and an employee of the company." The Government's brief filed in the United States Court of Appeals for the Third Circuit refers to Gaziano as "the owner-president of Appellant, Suncrest Environmental Resources Corporation (SERC)." The evidence presented at trial established that Gaziano was exclusively and completely responsible for all of the corporate affairs and decisions of SERC. Counsel for SERC argued at the sentencing that the evidence presented at trial established that SERC and Gaziano were one and the same, in as much as SERC was the alter ego of Gaziano, and that, therefore, the imposition of fines against both was improper and constituted a violation of the Double Jeopardy Clause of the Fifth Amendment.

The charges brought by the Government in the instant case involved an alleged conspiracy to defraud West Penn Power Company (hereinafter WPP), a major power producing utility, which provides electrical energy to private consumers in Western Pennsylvania.

The Western District of Pennsylvania includes a substantial geographical area served by WPP and there was a substantial probability that some of the prospective jurors received electrical power from WPP.

During the *voir dire* conducted by the court pursuant to Rule 24 of the Federal Rules of Criminal Procedure, counsel for Petitioner requested that the court ask prospective jurors whether or not any of them received power from WPP. Petitioner was concerned that the allegations made by the Government might suggest to the jury that the effect of the alleged fraud, claimed by the Government to involve a $10,000,000.00 contract, was to increase the already skyrocketing utility bills paid by WPP customers. The Government's case, therefore, would tend to suggest to those jurors who received power from WPP that they suffered an actual financial loss as a result of the

alleged fraud. It is the Petitioner's position that such a pecuniary interest would bias the jurors against Petitioner and against the other Defendants.

Although the District Court agreed to ask the prospective jurors other questions that were orally requested during *voir dire*, the court refused to ask which jurors, if any, received power from WPP.

REASON RELIED UPON FOR THE ALLOWANCE OF THE WRIT

Petitioner respectfully represents that this Court should exercise its sound judicial discretion and grant Petitioner's Petition for Writ of Certiorari for the following reasons.

The Judgment Order of the United States Court of Appeals for the Third Circuit, affirming the judgment of the District Court and denying the appeal of Petitioner, is contrary to the general principles enunciated by this Court.

The United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit have imposed duplicate fines against Gaziano and against Petitioner, Gaziano's alter ego. The imposition of those duplicate fines violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. The question of the scope and coverage of the Fifth Amendment Double Jeopardy Clause is a question of great public importance because of the large numbers of solely and/or closely held corporations and partnerships in the United States. (The Internal Revenue Service reported that in 1976 there were 11,358,235 sole proprietorships [IRS Publication 438], that in 1978 there were 1,310,107 partnerships [IRS Publication 369], and that in 1977 there were 2,334,356 corporations in the United States [IRS Publication 16]. Many of these businesses might be governed by the rule of this case).

Although this Court has enunciated general principles concerning the application of the Double Jeopardy Clause to corporations and concerning the prohibition against a double fine for the same offense, the specific question concerning the application of the Double Jeopardy Clause to a solely owned and/or closely held corporation and its owner is presently a novel and unsettled question. Although the question is presently unsettled, the general principles enunciated by this Court indicate that the Judgment Order of the Third Circuit is in conflict with the general principles followed by this Court.

The refusal by the United States District Court for the Western District of Pennsylvania to ask prospective jurors if they were customers of WPP and the affirmance of the Petitioner's convictions by the United States Court of Appeals for the Third Circuit deprived Petitioner of its Sixth Amendment right to be tried by an impartial jury, and deprived Petitioner of its Fifth Amendment right to Due Process of Law.

This case presents important constitutional issues that can be effectively isolated for consideration by this Court. This Court should exercise its sound judicial discretion and should exercise its supervisory power over the lower federal courts to resolve these important constitutional questions.

ARGUMENT

I. THE CONVICTION, SENTENCING AND FINING OF BOTH GAZIANO AND SERC ARE PROHIBITED BY THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A. GENERAL PRINCIPLES ENUNCIATED BY THE SUPREME COURT.

The Fifth Amendment to the United States Constitution provides in pertinent part that no "person be subject for the same offense to be twice put in jeopardy of life or limb."

The United States Supreme Court has been called upon on a number of occasions to interpret and apply the Double Jeopardy Clause of the Fifth Amendment. In *Ex parte Lange*, 85 U.S. 872, 18 Wall. 163, 21 L.Ed. 872 (1874), this Court declared that "if there is anything settled in the jurisprudence of England and America, it is that no man be twice lawfully punished for the same offense. ...there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offense." 85 U.S. at 876, 18 Wall. at 168.

"The protection against the action of the same court in inflicting punishment twice must surely be as necessary, and as clearly within the maxim, as protection from chances or danger of a second punishment on a second trial." *Id.*

In *United States vs. Benz*, 282 U.S. 304, 307, 51 S.Ct. 113, 114, 75 L.Ed. 354 (1931), this Court once again stated that, "the argument seems to us irresistible, and we do not doubt that the Constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it."

It is Petitioner's position that the District Court and the Court of Appeals have punished Petitioner twice "in the same court, on the same facts, for the same statutory offense." *Ex parte Lange*, Supra. The imposition of duplicate maximum fines against Gaziano and SERC constitute an improper double punishment.

In *North Carolina vs. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d. 656 (1969), this Court declared that the same Double Jeopardy analysis is equally applicable to the imposition of prison sentences and to the imposition of fines. 39 U.S. at 718, 89 S.Ct. at 2077, footnote 12.

In *Jeffers vs. United States*, 432 U.S. 137, 155, 97 S.Ct. 2207, 53 L.Ed.2d. 168 (1977), this Court once again stated that "fines, of course, are treated in the same way as prison sentences for purposes of Double Jeopardy and multiple - punishment analysis."

Although Petitioner is a corporation, it is entitled to the same Double Jeopardy protection as any other "person". In *Fong Foo vs. United States*, 369 U.S. 141, 82 S.Ct. 671 (1962), and *United States vs. Martin Linen Supply Company*, 430 U.S. 564, 97 S.Ct. 1349, 51 L.Ed.2d 642 (1977), this Court concluded that the Constitutional guaranty against Double Jeopardy is applicable to corporations and is subject to the same analysis as in cases involving individuals. Accord, *United States vs. Hospital Monteflores, Inc.*, 575 F.2d 332 (1 Cir. 1978); *United States vs. Security National Bank*, 546 F.2d 492 (2 Cir. 1976).

This Court has on a number of occasions held that courts should deal with the substance of transactions conducted by a corporation to determine whether a corporation is merely the instrumentality for another corporation or for an individual. This Court has indicated that in such circumstances, courts should disregard the separate corporate identity of the corporation which is nothing other than an alter ego for said individual or other corporation. E.g., *Chicago, Milwaukee and St. Paul Railway Company vs. Minneapolis Civic and Commerce Association*, 247 U.S. 490, 38 S.Ct. 553, 62 L.Ed. 1229 (1918); *Gulf Oil Corporation vs. Lewellyn*, 248 U.S. 71, 39 S.Ct. 35, 63 L.Ed. 133 (1918); *Anderson vs. Abbott*, 321 U.S. 349, 64 S.Ct. 531, 88 L.Ed. 793 (1943), reh. den. 321 U.S. 804, 64 S.Ct. 845, 88 L.Ed. 1090. In this case, the evidence established that SERC was merely the alter ego of Gaziano. Under the principles established by this Court, the lower courts should have disregarded the separate corporate identity of SERC, and should have imposed just one punishment.

B. APPLICATION OF THOSE PRINCIPLES TO THIS CASE.

A correct application of the above mentioned principles enumerated by the Supreme Court can only lead to the conclusion that the Double Jeopardy Clause prohibits the imposition of duplicate maximum fines, in this case, against both Gaziano and SERC.

Petitioner does not contest the well established rule of law that both a corporation and its officers who are involved in the commission of a crime can be prosecuted for that crime. *United States vs. Wise*, 370 U.S. 405, 82 S.Ct. 1354, 8 L.Ed.2d 590 (1962). Nor does Petitioner contest the fact that Congress included corporations within the definition of "person" in Title 18 of the United States Code. However, Petitioner contends that under the evidence presented at the trial, SERC is not and cannot be a separate "person" under the law because it was a mere instrumentality through which Gaziano conducted his business. Because Petitioner was the instrumentality through which Gaziano conducted his business, it was his alter ego and, therefore, should not have been separately tried nor separately sentenced apart from Gaziano.

The critical factor which distinguishes this case from the principle enunciated in *United States vs. Wise, Id.*, is that in this case, Petitioner and Gaziano were not separate legal entities. The evidence presented at trial established that Gaziano was the president, owner and controlling shareholder of SERC, and that Gaziano completely dominated the affairs of SERC. The evidence further established that SERC had no separate existence, will or mind of its own and that it was not capable of engaging in any separate activities or decisions apart from Gaziano.

It is well settled law that when there is "such a unity of interest and ownership between (the corporation and the individual defendant)... the former was the alter ego of the latter."

Dudley vs. Smith, 504 F.2d 979, 981 (5 Cir., 1974); Cf. *Bucyrus-Erie Company vs. General Products Corporation*, 643 F.2d 413 (6 Cir., 1981); *International Controls Corp. vs. Vesko*, 490 F.2d 1334 (2 Cir., 1974); *Fitzgerald vs. Central Bank and Trust Company*, 257 F.2d 118 (10 Cir., 1958).

Because Petitioner was nothing other than the alter ego of Gaziano, it had no separate or independent legal existence. To treat an individual and his alter ego corporation as separate entities for purposes of criminal responsibility, "would overextend the fiction of corporate personality." *United States vs. Carroll*, 144 F.Supp. 939, 941 (S.D.N.Y. 1956). As the court reasoned in *United States vs. Carroll, Id.*, in a situation where an individual uses a corporate form to carry out *his* crime, "there is no organization and no one other than the sole criminal to deter or punish. In effect, a man would be more severely punished if he chose to commit his crime by using a corporate form than he would if he committed it through another business device." *Id.*, at 942. Although the court did not specifically consider the Double Jeopardy implications in the *Carroll* case, the reasoning applied by the court was essentially based upon Double Jeopardy principles. The reason that "more severe punishment" could not be imposed was that such punishment would violate the Double Jeopardy Clause of the Fifth Amendment.

This case is even clearer than *Carroll*. In *Carroll*, the evidence did not reveal the ownership of the corporate defendant. In this case, SERC is owned by Gaziano. The dominance by Gaziano over Petitioner is clearer and more complete than the dominance exercised by *Carroll* over his corporate alter ego. Consequently, the conviction and imposition of fines against the Petitioner "would over extend the fiction of corporate personality," *Id.* at 941, that much farther. According to the Double Jeopardy principles enunciated by this Court and according to the reasoning applied in the *Carroll* case, it would

be improper to punish both Gaziano and Petitioner merely because Gaziano chose to commit his crime by using a corporate form. When a crime is committed by an individual through his alter ego corporation, and when the alter ego corporation has no separate or independent existence, the prosecution should be of the individual rather than the corporation. Cf. *United States vs. Finnigan*, 504 F.2d 1355 (8 Cir. 1974); *Sell vs. United States*, 336 F.2d 467 (10 Cir. 1964).

In *United States vs. Central Liquor Co.*, 628 F.2d 1264 (10 Cir. 1980), 1266, cert. den. 449 U.S. 1022, 101 S.Ct. 590, 66 L.Ed.2d 484, reh. den. 449 U.S. 1104, 101 S.Ct. 905 (1980), the court implied that the conviction of a partnership and its most active partner would violate the Double Jeopardy Clause. The court stated that, "should both the individual partners and the partnerships be convicted in these cases, this court would be presented with a pure double jeopardy question, unsullied by a need to reconsider the jury's factual findings." However, because the case only dealt with the denial of a motion to dismiss the indictments, the court dismissed the appeal because no final decision had been rendered. This case presents the pure, unsullied Double Jeopardy question referred to by the court in *United States vs. Central Liquor Co., Id.*

A brief review and application of the aforementioned Double Jeopardy principles to this case will clearly show why the imposition of duplicate maximum fines against both Gaziano and Petitioner violate the Double Jeopardy Clause of the Fifth Amendment.

Since the evidence presented at trial establishes that Petitioner was the alter ego of Gaziano, the Government has twice indicted, twice tried, twice found guilty and twice punished the same "person" for the same offense. The court has imposed duplicate maximum fines against both Gaziano and Petitioner. Consequently, the court has imposed a punishment which is

not warranted by Federal Law, 18 U.S.C. §§371, 1341 and 1952, and which is prohibited by the Double Jeopardy Clause of the Fifth Amendment.

As stated above, Petitioner does not contest the rule enunciated by this Court in *United States vs. Wise*, Supra., that both a corporation and its corporate officers involved in a crime can be prosecuted and convicted for the commission of a crime. Petitioner does not contend that the thoughts and actions of all owners, officers and/or shareholders of a corporation cannot be separated from the thoughts and actions of the corporation. However, in this case, no such separation can be made because Gaziano and Petitioner are one and the same "person". As the court noted in *United States v. Consolidated Coal Company*, 424 F.Supp. 577 (S.D. Oh. 1976), if the individual's mind and being are merged so completely with that of the corporation so that only one person's cognition remains, rather than more than one, only one "person" should be prosecuted.

In this case, Gaziano was totally responsible for conducting the affairs of Petitioner. His mind and being were so merged with that of Petitioner, that only one person's cognition remained. Therefore, Petitioner did not have any separate existence and should not have been subject to prosecution nor punishment.

The imposition of duplicate maximum fines in this case is a clear violation of the Double Jeopardy Clause because it constitutes the imposition of a double punishment against the same "person" for the same offense.

This Court should exercise its sound judicial discretion and grant this Petition for a Writ of Certiorari so that the applicability and the scope of the Double Jeopardy Clause can be determined by this Court.

2. THE TRIAL COURT ERRED IN REFUSING DEFENSE COUNSEL'S REQUEST TO ASK PROSPECTIVE JURORS WHETHER THEY HAD A BUSINESS RELATIONSHIP WITH THE ALLEGED VICTIM, AND IN SO DOING DEPRIVED PETITIONER OF ITS RIGHT TO AN IMPARTIAL JURY UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND TO DUE PROCESS OF LAW UNDER THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Sixth Amendment to the United States Constitution provides in pertinent part that, "in all criminal prosecutions, the accused shall enjoy the right to...an impartial jury...."

This Court has interpreted and applied the Sixth Amendment's guaranty of an impartial jury on a number of occasions. In *United States vs. Wood*, 299 U.S. 123, 145-146, 57 S.Ct. 177, 185, 81 L.Ed. 78 (1936), this Court declared that, "impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula."

Although there is no particular test or formula that can be used in every case to insure that the accused is tried by a jury that has "a mental attitude of appropriate indifference," *Id.*, the trial court has an affirmative duty to provide an impartial jury.

In *Dennis vs. United States*, 339 U.S. 162, 168, 70 S.Ct. 519, 521 (1950), this Court declared that, "while impaneling a jury the trial court has a serious duty to determine the question of actual bias, and a broad discretion in its rulings on challenges therefor. (Citations omitted.) In exercising its discretion, the trial court must be zealous to protect the rights of an accused."

In *Ham vs. South Carolina*, 409 U.S. 524, 93 S.Ct. 848, 35 L.Ed.2d 46 (1973), this Court held that the Due Process Clause is designed to insure the essential demands of fairness, including the right to an impartial jury which is free from bias and prejudice.

In this case, the trial court did not satisfy its serious duty to determine the question of actual bias and it was not zealous to protect the rights of an accused. The trial court's refusal to question prospective jurors to determine if they might have a financial interest or prejudice concerning the case denied Petitioner its right to an impartial jury.

Although the *voir dire* question was not submitted in a written form prior to the *voir dire* examination, it was orally requested by Petitioner in sufficient time for the court to determine the propriety of the requested question and in sufficient time that the *voir dire* examination would not have been delayed.

Federal Rule of Criminal Procedure 24 provides that the trial court *shall* submit to the prospective jurors additional questions requested by the parties that are proper. The Rule does not require that said questions be submitted in writing prior to *voir dire*. If a requested question is proper, it *shall* be asked by the Court. Other *voir dire* questions that were orally requested during *voir dire* were accepted by the trial court. The trial court's duty to zealously protect the rights of an accused required that it ask all proper questions to insure that jurors would not have a financial interest and/or prejudice concerning the case.

Clearly, a person, who either has a financial interest in the outcome of a case or who may have suffered a financial loss as a result of the occurrences alleged, is not competent to sit as a juror on the trial of the case because of his potential prejudice. *Chestnut vs. Ford Motor Company*, 445 F.2d 967 (4 Cir. 1971). For this reason, the trial court committed reversible error when

it refused to question prospective jurors to determine whether or not they might have had a financial interest and/or prejudice concerning the case. *United States vs. Baldwin*, 607 F.2d 1295 (9 Cir. 1979). In this case, the Government alleged that as much as $10,000,000.00 was received by Petitioner and/or Gaziano over a three (3) year period as a result of alleged unlawful activity.

Because WPP, the alleged victim, provided electric power to a substantial portion of the population in the Western District of Pennsylvania, there was a significant possibility that a number of prospective jurors had been receiving electric power from WPP during the period of time in question. For the purposes of the *voir dire* examination, the court could take judicial notice that these potential jurors, like other citizens, had experienced greatly increased utility bills.

The potential financial interest and prejudice of the jurors could have been an important factor for two (2) reasons. The jurors might have believed that they had suffered a direct financial loss in the form of increased electric bills as a result of the alleged fraud, and the jurors might have believed that they would experience a decreased bill in the future if WPP were able to recoup the loss after a conviction.

Despite the potential economic interest of the prospective jurors, the court refused to inquire whether or not said prospective jurors were or had been customers of WPP. Consequently, the court did not determine the existence or extent of any bias, did not determine whether or not said prospective jurors could decide the case free from bias, and did not provide Petitioner an impartial jury as required by the Fifth and Sixth Amendments.

The Court should exercise its sound judicial discretion and grant this Petition for a Writ of Certiorari so that the applicability and the scope of the Sixth Amendment's guaranty of an impartial jury and the Fifth Amendment's guaranty of Due Process of Law can be determined by this Court.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that this Petition should be granted and a Writ of Certiorari should issue to review the Judgment Order of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

FELDSTEIN GRINBERG STEIN & McKEE

BY: ...../s/ STANLEY M. STEIN.....
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...../s/ ARTHUR D. FELDMAN.....
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Attorneys for Petitioner,
Suncrest Environmental
Resources Corporation

United States Court of Appeals

FOR THE THIRD CIRCUIT

No. 81-2683

UNITED STATES OF AMERICA

v.

PHILLIP GAZIANO, ALFRED ROYSTER, JR.
SUNCREST ENVIRONMENTAL RESOURCES CORP.

Suncrest Environmental Resources Corp.,
Appellant

(D.C. Criminal No. 81-00006-03)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Submitted Under Third Circuit Rule 12(6)
May 10, 1982
Before: GIBBONS and HUNTER, *Circuit Judges*
and THOMPSON, *District Judge**

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*Hon. Anne E. Thompson, United States District Judge for the District of New Jersey, sitting by designation.

633 U.S. Post Office and Courthouse
Pittsburgh, PA 15219

Attorneys for Appellee

JUDGMENT ORDER

Suncrest Environmental Resources, Inc. appeals from a judgment imposing fines following its conviction for mail fraud, 18 U.S.C. §1341, using facilities of interstate commerce for bribery, 18 U.S.C. §1952, and conspiracy, 18 U.S.C. §371. It contends:

1) that imposing sentence both on it and on its sole shareholder Phillip Gaziano violates the double jeopardy clause of the fifth amendment;

2) that the court erred in refusing to permit voir dire of prospective jurors with respect to their status as customers of West Penn Power Company.

There is no merit to these contentions.

It is ORDERED and ADJUDGED that the judgment of the district court is affirmed.

BY THE COURT,

...../s/ JOHN J. GIBBONS.....
Circuit Judge

Attest:

.....SALLY MRVOS.....
Sally Mrvos, Clerk

DATED: MAY 11, 1982